

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

STEVEN SCHREIBER, et al.,	*	Case No. 15-CV-06861 (CBA)
	*	
Plaintiffs,	*	Brooklyn, New York
	*	November 29, 2018
v.	*	
	*	
EMIL FRIEDMAN, et al.,	*	
	*	
Defendants.	*	
	*	
* * * * *		

TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE  
BEFORE THE HONORABLE JAMES ORENSTEIN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs:	RAPHAEL M. ROSENBLATT, ESQ. Rosenblatt Law, PC 21 Court Plaza South, Suite 305 Hackensack, NJ 07601
For the Defendants, Nelkin & Nelkin:	NICOLE I. HYLAND, ESQ. TYLER MAULSBY, ESQ. Frankfurt Kurnit Klein & Selz, PC 488 Madison Avenue, 10th Floor New York, NY 10022

Proceedings recorded by electronic sound recording, transcript  
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PLAINTIFF:

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1 (Proceedings commenced at 9:39 a.m.)

2 THE CLERK: Civil cause for a status conference,  
3 Schreiber vs. Friedman, et al., docket no. 15-CV-6861. Would  
4 the parties please state their appearances for the record.

5 MR. ROSENBLATT: Good morning. Raphael Rosenblatt  
6 from Rosenblatt Law, PC on behalf of Eugene Schreiber and --

7 THE COURT: Good morning.

8 MR. ROSENBLATT: -- Steven Schreiber and Two Rivers  
9 Coffee. Both of the Schreibers are here accompanying me in  
10 court today.

11 THE COURT: Good morning to all of you.

12 MR. S. SCHREIBER: Good morning, Your Honor.

13 THE COURT: Good morning.

14 MR. E. SCHREIBER: Good morning.

15 MS. HYLAND: Nicole Hyland, of Frankfurt Kurnit  
16 Klein & Selz, representing Nelkin & Nelkin. And my clients  
17 are also here with me today.

18 THE COURT: Good morning.

19 MS. NELKIN: Good morning.

20 MR. MAULSBY: Tyler Maulsby, Frankfurt Kurnit Klein  
21 & Selz also on behalf of Nelkin & Nelkin.

22 THE COURT: Good morning.

23 THE COURT: All right, folks. So we've got the  
24 issue of the stipulation. And let's just go item by item,  
25 unless you have anything to report about any progress you've

1       made since we last were together.

2               MR. ROSENBLATT: We did have a mediation session  
3 yesterday, Your Honor.

4               THE COURT: Yeah. How did that go?

5               MR. ROSENBLATT: It went for I'd say a total of  
6 about almost 7:00, 7:30 at night.

7               MS. HYLAND: 7 o'clock, yeah.

8               MR. ROSENBLATT: Yeah.

9               THE COURT: Any problems?

10              MR. ROSENBLATT: We made some incremental progress.  
11 We were not able to settle, but there was some significant  
12 amount of dialog back and forth. Some different proposals  
13 were floated, but unfortunately we didn't -- weren't able to  
14 push anything past the finish line, so.

15              THE COURT: Okay. So push forward here.

16              MR. ROSENBLATT: Okay.

17              THE COURT: I saw that -- this is unrelated in a  
18 sense, but I saw that you --

19              MS. HYLAND: Right.

20              THE COURT: -- withdrew the separate litigation.

21              MS. HYLAND: Right.

22              THE COURT: Any significance to that that I should  
23 be aware of?

24              MS. HYLAND: The significance is that under the  
25 rules there's 90 days to serve. We have never served that

1 complaint.

2 THE COURT: I see.

3 MS. HYLAND: And the deadline to serve was coming  
4 right up before the mediation. We didn't really want to  
5 precipitate any, you know, issues, so we just have withdrawn  
6 without prejudice hoping that this can be resolved. And if  
7 not, then we may have to go forward then.

8 THE COURT: Okay. Is there still some hope you  
9 think for further mediation or settlement efforts?

10 MS. HYLAND: Well, our understanding is that we may  
11 be receiving a mediator's proposal.

12 THE COURT: Oh, okay.

13 MS. HYLAND: So I'm not sure what the status of that  
14 is. But, you know, we worked very hard yesterday. It was a  
15 very long day. We made some progress. I hope that eventually  
16 we can or --

17 THE COURT: I hope so too.

18 MS. HYLAND: Yeah.

19 THE COURT: And as always, just to reiterate, I'm  
20 available to help in whatever way you think possible. You  
21 know, we'll let the bigger issue play out as best it can. If  
22 there's mediator's proposal coming, that's great.

23 But if you think that either a session with me or  
24 referring it to another magistrate judge -- because, you know,  
25 I'm involved in other things -- whatever you think, if there's

1       some way to make progress on settlement, obviously that's the  
2       best way we could get this done.

3               All right. But any progress on the issues regarding  
4       the stipulation or there's still hope?

5               MS. HYLAND: I did have a question.

6               There were two -- there was what we refer to as  
7       stipulation one and stipulation two.

8               And I was wondering what the status was on the stip  
9       one because I believe that that was -- the idea was that we  
10      were going to have that signed and filed, which we did, and  
11      that was going to get rid of the defendants and have the funds  
12      deposited. And then stip two would be resolved through this  
13      process of deciding which of the parties --

14              THE COURT: I'll be honest, I get so lost in all the  
15      papers here --

16              MS. HYLAND: I know.

17              THE COURT: -- that I haven't honestly paid  
18      attention to that distinction.

19              MS. HYLAND: Okay.

20              THE COURT: But once we settle -- not settle -- but  
21      once we resolve all the issues with this, I'll make sure all  
22      the stips are entered in their final form.

23              MS. HYLAND: Okay. Great. All right. Great.  
24      Thank you.

25              THE COURT: Yeah. Thanks for bringing that to my

1 attention because I might well have lost track of it.

2 Okay. So what I propose to do is just go in order  
3 through the various, you know, specific issues you've got here  
4 from you both on them and tell you my resolution, rather than  
5 just hear from each of you on all of them at once.

6 So let's start with the -- I think it's paragraph  
7 2(a), the kind of equity that if transferred or conveyed or  
8 otherwise sent to somebody else requires notice.

9 Maybe I'm missing something here, but let me ask  
10 you, Mr. Rosenblatt, wouldn't any sharers or, you know, equity  
11 in the company be fungible?

12 I mean is there any real distinction between those  
13 attributable to Friedman and Koenig interests and those  
14 attributable to your clients?

15 MR. ROSENBLATT: Can I just have one second?

16 THE COURT: Yeah.

17 (Pause.)

18 MR. ROSENBLATT: I think the issue there, Judge, is  
19 in terms of what would be recovered so to say pursuant to the  
20 settlement agreement because the Schreibers were already  
21 holding their 23 percent interest in the company.

22 And so I think that the issue was with regard to the  
23 charging lien what's covered would be that the shares that are  
24 coming in --

25 THE COURT: But this is -- this is just about the

1 notice provision.

2 MR. ROSENBLATT: Right.

3 THE COURT: If you want -- if you want to convey  
4 shares, everybody agrees that there are some shares that if  
5 conveyed there must first be notice to the Nelkins, right?

6 MS. HYLAND: Yes.

7 THE COURT: The dispute is about whether that  
8 requirement applies to the transfer of any shares or just  
9 those attributable to what's recovered here.

10 What I'm trying to figure out is how would you  
11 really know? I mean, what distinguishes -- once a share is  
12 transferred, what distinguishes it as having come from one  
13 client or another? They're fungible, right?

14 MR. ROSENBLATT: They are. I think if I may -- I  
15 think the issue was more the diluting part of it rather than  
16 the -- rather than the specific shares as indicated.

17 THE COURT: Okay. Wait. Let me turn to the  
18 language in the --

19 MR. ROSENBLATT: So in other words --

20 THE COURT: Give me a moment.

21 MR. ROSENBLATT: Yeah.

22 THE COURT: I just want to turn to the language in  
23 the stip.

24 (Pause.)

25 THE COURT: So your proposal is transferring,



1 selling, conveying, pledging, assigning, mortgaging,  
2 encumbering or disposing of any portion of the Friedman  
3 membership interest or the Koenig membership interest.

4 And their proposal is transferring, et cetera, any  
5 portion of Two Rivers' equity or converting any portion of the  
6 Two Rivers' equity into debt. So what am I missing here?

7 MR. ROSENBLATT: Well, I think there's two things.

8 One I think is terming it Two Rivers' equity I think  
9 is a little bit over broad in terms of I think the issue of  
10 the loan forgiveness and all of those other things that go  
11 into the equity of the company rather than specifically  
12 shares.

13 And I know it may be a little bit nuanced, but --

14 THE COURT: Okay.

15 MR. ROSENBLATT: Yeah.

16 THE COURT: What can't you do without notice that  
17 you should be able to do without notice under the Nelkins'  
18 proposal?

19 MR. ROSENBLATT: Well, one is dilute, that we --

20 THE COURT: How --

21 MR. ROSENBLATT: Yeah.

22 THE COURT: What would you be doing that would  
23 dilute that would be forbidden?

24 MR. ROSENBLATT: Well, if they wanted to bring in an  
25 investor, for example, and assign shares over or something

1       like that. If they wanted to issue more shares of stock, that  
2       would be diluting it if it was going to someone else. So --

3               THE COURT: And if the idea is to preserve the value  
4       of the equity in the company so that it's available should  
5       they prevail, why isn't that something that requires notice?

6               MR. ROSENBLATT: Well, again it's an issue of them  
7       being able to make business decisions that they believe are  
8       appropriate --

9               THE COURT: Yes. But there's nothing -- look -- and  
10      I want to be clear because there's somewhere -- I'm going to  
11      listen to each of you on all of these, but there's somewhere  
12      I'm hard pressed to see one side's, the merit on one side, and  
13      I'm hard pressed to see the merit on the other. But let me  
14      say all of this about all of them.

15              There's nothing in any of this that's going to  
16      prevent Two Rivers from operating in the way it sees fit if  
17      after notice there's no problem.

18              MR. ROSENBLATT: Right.

19              THE COURT: It's just a question of notice.

20              MR. ROSENBLATT: Right. No. We understand that. I  
21      mean, they --

22              THE COURT: So they're not prevented from  
23      transferring shares.

24              MR. ROSENBLATT: Right. We understand that. I  
25      mean, I think the issue really is that given, frankly

1 speaking, the way things are now, the Schreibers are concerned  
2 that anything that triggers notice is going to involve some  
3 kind of dispute that requires -- a resolve that requires  
4 coming to the Court to have resolution.

5 So the idea is to try to somewhat narrow the scope  
6 of what requires notice in and of itself because of that  
7 concern that it will interfere with their ability to run the -  
8 -

9 THE COURT: Right. But the other concern -- and  
10 this is a global thing so we might as well put it up front --

11 MR. ROSENBLATT: Of course.

12 THE COURT: -- the other concern is that if it's  
13 something other than the normal day-to-day operations that  
14 could affect the overall value of what you guys are fighting  
15 over, that's something that should fairly result in notice.  
16 And if there's a dispute -- as you're right there may well be  
17 -- then you have the dispute and you resolve it.

18 But if it's -- you know, my approach to all of  
19 these, you know, granulars, generally is if it's -- if it  
20 relates to something that could materially affect the value of  
21 what is at issue in this litigation, there should be notice.

22 MR. ROSENBLATT: I understand.

23 THE COURT: If it, on the other hand, is just this  
24 is how you run a business day to day, it shouldn't.

25 MR. ROSENBLATT: Right.

1 THE COURT: But bringing in new investors, that's --  
2 yeah, that's something that's going to affect what you're  
3 fighting over.

4 MR. ROSENBLATT: Understood.

5 THE COURT: So.

6 MR. ROSENBLATT: So I think -- I think really again  
7 the nuance was two things. One was how they define equity and  
8 it's a little bit I think overbroad. But if we want to call  
9 it the shares of Two Rivers, membership interest in Two Rivers  
10 --

11 THE COURT: Well.

12 MR. ROSENBLATT: -- I don't think we have a problem  
13 with that. I think equity may be a little bit --

14 THE COURT: But if -- look, the one thing you told  
15 me that you want to do that you can't --

16 MR. ROSENBLATT: Yeah. Yeah.

17 THE COURT: -- doesn't fall within that definition  
18 if you want to bring in new investors.

19 MR. ROSENBLATT: Right.

20 THE COURT: So already I'm very skeptical of what  
21 you're proposing and it doesn't seem to be in line with the  
22 neutral principle that I think we can agree on.

23 MR. ROSENBLATT: Yes. No. We can agree on that.

24 And --

25 THE COURT: So why do we need to redefine equity?

1 MR. ROSENBLATT: Okay.

2 THE COURT: Okay. Good. All right. So I'm going  
3 to accept the Nelkins' proposal on paragraph 2(a).

4 And let just reiterate, just to make sure we've got  
5 this on the record and I'm not getting this wrong, the reason  
6 we're here, by my understanding, is that everyone here agrees  
7 that I'm going to make a decision on each of these disputes  
8 and that's the way it's going to be and you're all going to  
9 accept that, correct?

10 MR. ROSENBLATT: Yes.

11 MS. HYLAND: Yes.

12 THE COURT: Okay. Good. All right. Okay. So  
13 2(a), I'm accepting the Nelkins' version.

14 Two(c), a single debt versus aggregate. And it's --  
15 Mr. Rosenblatt, give me some sense of what you're worried  
16 about requiring notice?

17 MR. ROSENBLATT: Well, this one goes to really more  
18 specifically than running the business.

19 THE COURT: Right.

20 MR. ROSENBLATT: In other words, they do a lot of  
21 inventory, my understanding is in excess of \$250,000 in any  
22 given month to get inventory selling. They may use lines of  
23 credit.

24 They may need just things that they would do in the  
25 normal course that in order to trigger the notice and have

1       them wait and then run to the Court for disposition and all  
2       that kind of stuff, they may lose their business opportunity  
3       to do that.

4               And so we're concerned that aggregate debt of  
5       \$250,000 is -- it's just it's not workable for them to run  
6       their business.

7               THE COURT: What is a typical month's worth of  
8       aggregate debt?

9               MR. S. SCHREIBER: What do you mean by aggregate  
10      debt? We --

11              MR. ROSENBLATT: Well --

12              THE COURT: Well, if you don't know, I'm surprised.

13              MR. ROSENBLATT: Well, no.

14              THE COURT: Because why are we fighting about it if  
15      you don't even know that you have that kind of debt?

16              MR. S. SCHREIBER: Hold it, Your Honor. I'll  
17      explain. We are a coffee company. So we buy about \$100,000  
18      worth of coffee a day. And we need it -- we order it at 4  
19      p.m. We get it at 8 a.m.

20              If I have to give notice that I'm ordering coffee  
21      because it's \$110,000 or a number like that, the opportunity  
22      is lost. Our business is -- we get an order from a customer  
23      on Monday, we have to ship on Wednesday. There's no time to,  
24      you know, wait for the Nelkin's to pick fights with me.

25              But in all honesty, we're driving the same train.

1 It's in my best interest for the company to succeed. I think  
2 the Nelkins don't trust me. But why would I fight for three  
3 years, give up, and then just sabotage it. I think that's the  
4 --

5 THE COURT: It's not sabotaging it. It's about  
6 hiding assets, that's really what this is about.

7 MR. S. SCHREIBER: They were my attorneys for three  
8 years. I'm her son-in-law. I think there should be a little  
9 more trust involved with --

10 THE COURT: Look, I couldn't agree more that there  
11 should be more trust, but all of you have squandered it. All  
12 of you. That's why we're here Mr. Schreiber.

13 Every one of you has done things in this litigation  
14 to squander any claim on the trust of an opposing party, so  
15 let's not -- let's not waste time with how there should be  
16 more trust. I couldn't agree more. I certainly understand  
17 why there isn't at this point. Look, I'm going to --

18 MR. ROSENBLATT: If I --

19 THE COURT: Wait. Here's my proposal. And I may  
20 have a similar proposal for some of these others.

21 I'm going to accept the aggregate debt, but on this  
22 one impose a fee switching provision. If after notice  
23 somebody comes to court and loses, they're paying fees for the  
24 other side. Because you're absolutely right.

25 In the normal course, you're going to aggregate

1 probably more debt than \$250,000. My strong expectation is  
2 that if there is notice we're doing this, there's going to be  
3 a lot of times when you say, oh, yeah, that's just how they  
4 run the business and they're not going to have any objection.

5 And they might even say you don't even have to give  
6 us notice for this particular kind of debt down the road. And  
7 that will go a long way towards building back the trust that  
8 has been lost.

9 But if you can't, and if they make a frivolous  
10 motion to say don't let them incur this, and all it's doing is  
11 frustrating your ability to run the business, they're going to  
12 end up paying your fees. Understood?

13 MS. HYLAND: Yes.

14 MR. ROSENBLATT: If I may, Judge, for one second?

15 THE COURT: Yeah.

16 MR. ROSENBLATT: I mean, I think the only concern  
17 with regard to aggregate is sort of how it's defined.

18 I mean, is it \$250,000 of debt at all with regard to  
19 any vendor total accumulation? Is it in regard to one vendor?

20 In other words, if they deal with the same vendor  
21 every month and/or every week and they incur a 110 line of  
22 credit or whatever it is, then that builds up very, very  
23 quickly. And so --

24 THE COURT: Here, Mr. Rosenblatt, is what I will  
25 confess completely mystifies me. That is a perfectly



1 reasonable question.

2 I cannot imagine that you had not already had that  
3 discussion and done your best to resolve it because I'm sure  
4 there's a way to define out certain kinds of debt. And we  
5 should not be here without all of you having exhausted the  
6 possibility of doing that.

7 MS. HYLAND: May I address --

8 MR. ROSENBLATT: We have had -- I'm sorry. We have  
9 had that conversation, and that's --

10 THE COURT: So you know the answer?

11 MR. ROSENBLATT: Right. But that's -- that was why  
12 our proposal didn't have anything with regard to aggregate  
13 because we were concerned about that very question, so.

14 THE COURT: Okay. Well, I'm accepting the Nelkins'  
15 proposal with the caveat that there's fee switching for a  
16 failed request to block an action. And I will be open as we  
17 go forward. You know, we're going to learn a lot going  
18 forward as which of these are imposing needless burdens and  
19 which aren't.

20 If you persuade me that this is imposing a needless  
21 burden, even without them coming to court, I will certainly  
22 hear you. And again I do expect everybody to be reasonable.

23 And let me say this. You guys -- I won't go back  
24 into it -- you've done a lot to make each other distrustful.  
25 I get that.

1           This is an opportunity in implementing this to show  
2           that you actually are being reasonable and have the same goal,  
3           which is let the business succeed, protect the Nelkins'  
4           legitimate interest in preserving the stakes that they're  
5           fighting for until the resolution of the merits.

6           And my guess is if you work in good faith to  
7           implement this, as you go along you will find that there are  
8           some notices that are going to be required that you really  
9           don't need to get and don't need to impose on the Schreiber's  
10          to provide and you'll agree to change it.

11          Yeah.

12          MS. HYLAND: Just a point of clarification. You  
13          said fee switching for a failed effort to block. Is it also  
14          fee shifting if it's a successful effort to block on this one?  
15          I'm just wondering if it goes both ways.

16          THE COURT: I don't think it should be, but I'll  
17          hear you out on that. Because what I have in mind is avoiding  
18          frivolous actions to prevent them from doing something that  
19          they're entitled to do.

20          If they give you notice and you say we're concerned  
21          about that and you're persuaded that they shouldn't, I don't  
22          know if that needs fee switching necessarily, because first of  
23          all it wasn't part of the proposal initially, and this is  
24          really to guard against excesses in seeking remedies based on  
25          notice. I'm not stating it well.

1 MS. HYLAND: No. I get it.

2 THE COURT: Yeah.

3 MS. HYLAND: I completely understand.

4 THE COURT: You get the idea. It's to keep you from  
5 using it as a weapon, the notice provision.

6 MS. HYLAND: Could we build in at least  
7 discretionary fee switching the other way just in case there's  
8 a really unreasonable --

9 THE COURT: I'm not going to do that now because I  
10 just don't see that what's going on creates an incentive for  
11 that.

12 MS. HYLAND: Okay.

13 THE COURT: Right. The idea of the stipulation is  
14 to create the right incentives for both sides to run the  
15 business in a normal way, not hide assets, and not, on your  
16 side, use the notice provision as a weapon.

17 MS. HYLAND: Okay.

18 THE COURT: I don't think you have an incentive to  
19 do that necessarily. I don't think fee switching for the  
20 successful motion is necessary, but again you can change my  
21 mind.

22 If we go forward and you're coming back time after  
23 time to block them from doing something that they shouldn't, I  
24 may well see the merit in that and I'll impose it.

25 MS. HYLAND: Okay.

1 THE COURT: All right. All right. 2(d), so  
2 payments of \$50,000 outside the ordinary course in -- that's  
3 the Nelkins' proposal. Schreiber's propose 250,000. Here I  
4 just need to get from both sides what you think is likely to  
5 come up that might exceed 50,000?

6 MR. ROSENBLATT: Well, just by way of example, what  
7 we talked about a few minutes ago.

8 THE COURT: Yeah.

9 MR. ROSENBLATT: I mean, their inventory is in the  
10 hundreds of thousands of dollars, not in --

11 THE COURT: That's the ordinary course of business?

12 MR. ROSENBLATT: Right. But again we're concerned  
13 that -- again, just given the way things have gone, we're  
14 concerned that if they want to make a payment to a vendor of  
15 \$110,000 they have to give notice. Or if they want to buy a  
16 machine, for example --

17 THE COURT: But wait. Let's stick with --

18 MR. ROSENBLATT: Okay.

19 THE COURT: -- take one at a time. Let's stick with  
20 the vendor.

21 MR. ROSENBLATT: Okay.

22 THE COURT: Would you say that if they are making a  
23 purchase of \$100,000 from a vendor under your proposed  
24 language, they would have to provide notice?

25 MS. HYLAND: Oh, I'm sorry. I thought you were

1 asking him.

2 THE COURT: No. I'm asking -- I'm asking you.

3 MS. HYLAND: Right. So our language is that on  
4 behalf of Two Rivers for more than \$50,000 for any transaction  
5 or for any payment at all at any amount outside the ordinary  
6 course of business.

7 THE COURT: Oh, okay. So you're just a flat 50,000  
8 no matter what?

9 MS. HYLAND: It's 50,000 no matter what. And that's  
10 based on --

11 THE COURT: I misunderstood. Okay.

12 THE COURT: That's based on the fact that, you know,  
13 as the Nelkin's have represented the Schreiber's for more than  
14 three years, they're very familiar with the actual expenses,  
15 they have all of the records of the expenses of the company,  
16 and 50,000 is actually quite high compared to their regular  
17 expenses. So I don't know where the 100,000 comes from, but  
18 we --

19 THE COURT: Okay.

20 MR. S. SCHREIBER: May I speak, Your Honor?

21 THE COURT: Go ahead.

22 MR. S. SCHREIBER: So I do -- I approve every single  
23 purchase order. And our purchase order is anywhere from  
24 100,000 for coffee and cocoa and tea a day, so I'm -- my rent  
25 is almost \$50,000 a month, so how in the world I'm going to go

1 every single --

2 THE COURT: Okay. Wait. Wait.

3 MR. S. SCHREIBER: I can't run a business this way.

4 THE COURT: Look, this is just a question of what's  
5 ordinary.

6 MR. S. SCHREIBER: I'm sorry, but --

7 THE COURT: No, it's fine. So this is just -- one  
8 of you is telling me facts that can't be supported.

9 MR. S. SCHREIBER: I run a business --

10 THE COURT: Yes. So somebody show me a document  
11 with --

12 MR. S. SCHREIBER: I can show -- I don't have my  
13 phone. I could have shown you --

14 THE COURT: Try not to interrupt, Mr. Schreiber.

15 MR. S. SCHREIBER: I'm sorry. I apologize.

16 THE COURT: Somebody show me a document that shows  
17 an ordinary, you know, coffee purchase.

18 MS. HYLAND: Can I also add one thing? I apologize,  
19 but it's important.

20 THE COURT: Yeah.

21 MS. HYLAND: We did offer during the negotiations to  
22 carve out certain expenses, coffee, tea, chocolate, things  
23 like that from this -- from this 50,000 limit and to have a  
24 higher limit for those. That was rejected.

25 THE COURT: Mr. Schreiber, Steven Schreiber, Eugene

1 Schreiber, stop talking when somebody else is talking. If you  
2 want to stay in this courtroom, you'll allow people to talk  
3 uninterrupted. Do you both understand that?

4 MR. S. SCHREIBER: Yes.

5 MR. E. SCHREIBER: Yes.

6 THE COURT: Good.

7 Go ahead, Ms. Hyland.

8 MS. HYLAND: So we -- in the -- there were very  
9 extensive negotiations over this and one of the things we --  
10 that issue was raised and we did offer to carve out coffee,  
11 tea, cocoa, and we said tell us if there are other categories  
12 where you need a higher limit, and that was rejected -- that  
13 offer. So we really didn't have a lot to work with.

14 THE COURT: Okay. Well, guys, go back to the table,  
15 give me a proposal that has carve outs for specific types.

16 Is there a problem, Mr. Schreiber? Mr. Schreiber,  
17 Steven Schreiber, is there a problem?

18 MR. S. SCHREIBER: No, Your Honor.

19 THE COURT: Your answer to that question is  
20 inconsistent with your actions in the courtroom.

21 MR. S. SCHREIBER: I'll just tell you my honest  
22 opinion. I run a coffee company. My lawyers are nitpicking  
23 and saying they know my business. It's just the documents are  
24 going to come from me. And I run the business every day. I  
25 live and breathe it. I fought for it. I mortgaged off

1 things. And they tell me they know my business better than  
2 me. I'm sorry. I'm just emotional. That's it. I apologize.

3 THE COURT: Look, you're emotional. They're  
4 distrustful. I get it. That's why you've got lawyers on both  
5 sides who can take the emotion out of it.

6 Now, look, it makes sense. You don't want to have  
7 to run to them every time you're buying some coffee. Ms.  
8 Hyland just told me they offered to carve that out.

9 Mr. Rosenblatt, is that untrue?

10 MR. ROSENBLATT: There were discussions about carve  
11 outs, but --

12 THE COURT: Did they offer to carve out supplies  
13 like that?

14 MR. ROSENBLATT: I believe there was a discussion of  
15 that, yes.

16 THE COURT: I'm not asking if there was discussion  
17 about it. I'm asking if they offered it?

18 MR. ROSENBLATT: I honestly don't remember the  
19 specifics.

20 THE COURT: Dispute what Ms. Hyland's told me.

21 MR. ROSENBLATT: I'm not disputing it.

22 THE COURT: So why on earth wouldn't you take that  
23 if that's the concern? Because the only thing that your  
24 client is getting so upset about that he won't let opposing  
25 counsel speak without interrupting, and the only thing that's



1       upsetting him so much that he won't let me make a ruling  
2       without visibly and audibly expressing his dissatisfaction  
3       with it, is the very thing that you don't dispute Ms. Hyland  
4       said she would carve out.

5               So what else is there that you're worried about?

6               MR. ROSENBLATT: Well, again I think that the issue  
7       really is one that the Schreiber's understand the --

8               THE COURT: Specifics, please. Don't tell me the  
9       issue is something that -- just tell me, what is it that you  
10      want to buy that costs more than \$50,000 that they're not  
11      willing to carve out?

12              MR. S. SCHREIBER: Okay. Your Honor, may I speak,  
13      please.

14              THE COURT: Sure.

15              MR. S. SCHREIBER: Thank you. I'll let you know  
16      what's involved. There was the K-cup. The K-cup, it seems  
17      very simple, just put into the coffee machine and coffee comes  
18      out, but it's a lot of little things that go inside. There's  
19      a filter inside there. The filter comes from Spain. I pay  
20      \$79,000 to \$80,000 just to get the filter here. Okay? That's  
21      one. That needs to be almost monthly that we have to buy just  
22      the one item.

23              There's coffee. There's lids. The lids are being  
24      ordered, million lids per order. The lids can go up to 50 to  
25      60 to \$80,000. Depends on the season or depends on the order

1 just for that little lid that goes on the K-cup.

2 There's cups. The cups we order by millions,  
3 trailer loads. Okay? Those can cost anywhere from 78 to  
4 \$80,000 per trailer load. So if you understand, there's  
5 boxes. We have 150 some odd flavors of boxes that we keep in  
6 inventory. Okay?

7 When we get an order from -- I'll just give you an  
8 example -- from Amazon Monday morning, by Wednesday afternoon,  
9 the thing has to be shipped. A simple item like a label that  
10 goes on Amazon box, that has to be printed, the ink, it's a  
11 million and one things that goes into this process. I can't  
12 every time I'm missing some item -- Your Honor, I'm sorry --

13 THE COURT: I'll hear you even if you don't shout  
14 it.

15 MR. S. SCHREIBER: I have no intention to shout. I  
16 apologize. But it's impossible to run a business.

17 If you would come to the office one day and you see  
18 what goes on there, you will go, you guys, how do you do this?  
19 It's very difficult to run -- every little item I got to  
20 approve, Mr. Nelkin can you please approve this? I can't run  
21 it.

22 I've got a charge backs. We have a person who just  
23 works on charge backs constantly. If I'm late for a half a  
24 day for a pickup I get a charge back. I get -- I lose money.

25 THE COURT: That's why you people are going to sit

1 down and decide the carveouts, because contrary to your  
2 protestation, Mr. Schreiber, I don't assume that it's a very  
3 simple thing.

4 What I assume is that the lawyers on both sides are  
5 speaking to me honestly about the course of their  
6 negotiations, and that Ms. Hyland has, in fact, offered to  
7 relieve you of the burden of giving notice for these things.

8 Am I misstating that?

9 MS. HYLAND: We offered to carve those out from the  
10 50,000 and put them under the 250,000, yes.

11 MR. ROSENBLATT: Again, just to clarify. I mean,  
12 they're saying --

13 MS. HYLAND: That they had proposed.

14 MR. ROSENBLATT: -- almost every aspect of their  
15 business involves payments of more than \$50,000, so carve outs  
16 wouldn't even --

17 THE COURT: You haven't yet identified a single  
18 thing despite multiple requests from me that they're not  
19 willing to carve out that you need to have carved out. Last  
20 chance, tell me something that they have not been willing to  
21 carve out that you need carved out?

22 MR. ROSENBLATT: Well, anything other than coffee,  
23 tea and cocoa. I mean, that's what they talked about carving  
24 out. And my point and the Schreibers' point is it's almost  
25 every aspect of their business. The lids, the cups, the ink,

1 the boxes, I mean, everything that goes into it. And so  
2 carve-outs may become --

3 THE COURT: Go ahead. Go ahead.

4 MS. HYLAND: The reason -- the way the negotiation  
5 went was we suggested this number. They said we have that  
6 expense in coffee. We came back and said, we'll carve out  
7 coffee --

8 THE COURT: All right.

9 MS. HYLAND: -- and we'll throw in tea and cocoa,  
10 and tell us what else you want us to carve out.

11 THE COURT: All right. All right. All right. All  
12 right. Sit down. Sit down.

13 MS. HYLAND: Sorry.

14 THE COURT: Here's what's going to happen.

15 By tomorrow, you will give them from the last month  
16 any ordinary course of business invoice greater than \$50,000.  
17 And Ms. Hyland will then tell you which ones she's willing to  
18 carve out and which ones no. And you'll write me a letter and  
19 you'll tell me what you've agreed on.

20 My guess is you are not going to want to come back  
21 here and have me go through it myself because you can all be  
22 assured that if it's something that is a regular business  
23 expense that, you know, exceeds \$50,000, then I'm not going to  
24 require a notice for it.

25 If it is not a regular business expense, even if it

1 exceeds \$50,000, I am. Send me proposed language by next  
2 week, please.

3 (Pause.)

4 THE COURT: And given the concern about interference  
5 with the ordinary course, I'm going to impose fee switching on  
6 this one as well once we have the language in place.

7 Okay. Moving on to paragraph 2(e), about hiring  
8 family members. And in 2(e), am I correct that the dispute is  
9 about -- oh, I'm sorry -- there's clearly dispute about  
10 whether there's a salary cutoff. Is there also a dispute  
11 about the scope of who's a family member for purposes of this  
12 paragraph?

13 MS. HYLAND: Yes. Our definition is broader than  
14 their definition.

15 THE COURT: Under your definition, could they hire  
16 your clients? Laugh, but --

17 MS. HYLAND: It's unlikely to happen.

18 THE COURT: -- but it strikes me as the height of  
19 chutzpah --

20 MS. HYLAND: Oh, I'm sorry. I didn't mean to --

21 THE COURT: -- for the Nelkin's in these  
22 circumstances to say we don't trust them to hire relatives.

23 MS. HYLAND: Well, it's not that they --

24 THE COURT: Why are we here if not for the fact that  
25 they hired relatives?

1 MS. HYLAND: Well, yes.

2 But I think the issue here is that again the  
3 Nelkin's are very familiar with the Schreibers' business.  
4 They know that none -- there are no family members that would  
5 be legitimately having positions at this company because  
6 that's not what they do.

7 So any hiring of a family member would raise a red  
8 flag and they just want notice of it so they can ensure that  
9 it's not something else.

10 THE COURT: So they've got a bunch of extra  
11 inventory that they need moved and a nephew is on summer  
12 vacation. So for a couple of weeks the nephew is clearing out  
13 the inventory and gets a couple of hundred bucks, that  
14 requires notice?

15 MS. HYLAND: Not a realistic scenario because there  
16 is no nephew that would have been hired. So I actually had  
17 the same question. And that's just not a scenario that would  
18 happen.

19 This is really about, you know, if they were to put  
20 someone on the payroll, there would not -- it's just a red  
21 flag that there might not be a legitimate basis to do that and  
22 there might be another reason why they have someone on their  
23 books.

24 THE COURT: If they hired as an intern and given a  
25 stipend of, you know, 500 a week or 1,000 a week, you're

1 concerned that your clients won't be able to recover the  
2 amount in controversy?

3 MS. HYLAND: We're not concerned about something  
4 like that, no.

5 THE COURT: So why does the \$100,000 salary cutoff  
6 not make sense?

7 MS. HYLAND: Well, I mean, I can talk to my clients  
8 about the 100,000. I think we were more concerned about the  
9 definition of what's a family member. But I can confer with  
10 them about it.

11 THE COURT: Who is it you don't want them to hire?  
12 (Pause.)

13 MS. HYLAND: One of the issues, for example, is they  
14 could put -- they could put a spouse onto the payroll and then  
15 increase --

16 THE COURT: It's a family business.

17 MS. HYLAND: -- and increase -- yes, but those  
18 spouses wouldn't -- they might be, you know, no-show types of  
19 jobs because those spouses don't actually have any skills that  
20 would be involved in running a coffee business or being part  
21 of a coffee -- that's not their -- that's not their  
22 profession.

23 So the concern would be the only reason you'd be  
24 doing that is to have a no-show job just to increase your own  
25 compensation through your spouse.

1 THE COURT: Ms. Hyland, really no disrespect, but  
2 we've been litigating this case for three years with a law  
3 firm that sends two lawyers to every proceeding, which has  
4 always struck me as unnecessary, who happen to be mother and  
5 son.

6 I don't think this is a case where it really helps  
7 you to draw attention to the idea that perhaps there are  
8 unnecessary expenses being charged to favor family members.

9 Narrower -- I'm adopting the Schreibers' proposal.

10 MS. HYLAND: Okay.

11 THE COURT: All right. 2(f), a major decision under  
12 the operating agreement.

13 It looks to me -- forgive me if I'm getting this  
14 wrong -- that the difference between the two proposals on 2(f)  
15 is that the Schreiber's want to be exempt from notifying the  
16 Nelkin's of actions that are also permitted by this  
17 stipulation. I'm unable to discern what those actions might  
18 be that you're trying to cover here.

19 MR. ROSENBLATT: Well, I think --

20 THE COURT: A specific example?

21 MR. ROSENBLATT: I don't. I think it really just  
22 means to the extent that such as Your Honor with regards to  
23 the family member issue, that obviously that's going to be  
24 permitted under the stipulation.

25 It may not be a major decision as to finding any



1 other documents and we just want to -- it was just sort of a  
2 belt and suspenders approach I made to make it clear --

3 THE COURT: Look, if this is belt and suspenders,  
4 you don't need it. A belt will do.

5 All right. Self-dealing in paragraph 2(g). Okay.

6 So, Ms. Hyland, give me -- what's the rough edge of  
7 this? What are you trying to get notice of that the  
8 Schreibers' proposal won't give you notice of?

9 MS. HYLAND: You know, if there is any transaction,  
10 a loan, for example, to --

11 THE COURT: But to whom?

12 MS. HYLAND: Right. -- to either Steven, Eugene or  
13 their spouses or other family members --

14 THE COURT: But that's covered under both proposals,  
15 isn't it?

16 MS. HYLAND: They just -- no, they only have Steven  
17 and Eugene or any entity --

18 THE COURT: Okay. So it's the spouses or other  
19 family members?

20 MS. HYLAND: Right.

21 THE COURT: Okay.

22 MS. HYLAND: Spouses and other family members. And  
23 then we also have an ownership interest, controlling interest,  
24 or if they're employed or compensated by that entity.

25 THE COURT: Okay. Is there -- Mr. Rosenblatt, is

1       there anything you have in mind that the Schreiber's would  
2       need to do that would be precluded or that would require  
3       notice under the Nelkins' version?

4               MR. ROSENBLATT: Well, we just -- we just think the  
5       Nelkins' version is way over broad in terms of the scope that  
6       --

7               THE COURT: What is it that --

8               MR. ROSENBLATT: I don't know that we anticipate  
9       anything that implicates either proposal to be honest. I just  
10      think it's --

11              THE COURT: Let's do --

12              MR. ROSENBLATT: The concern was that the Nelkin  
13      version is particularly over broad.

14              THE COURT: But look, is there something that you  
15      say, look, to run our business, the normal course, we need to  
16      do something that would require notice under this?

17              What do you have in mind that would require notice  
18      just in day-to-day operations of the business?

19              MR. ROSENBLATT: No. They're not engaged in any  
20      self-dealing, whether defined by the --

21              THE COURT: Under their proposal?

22              MR. ROSENBLATT: They're not engaged in any of that.

23              THE COURT: So what is it -- what's it going to --

24              MR. ROSENBLATT: Again --

25              THE COURT: Because, you know, the thing with the

1 aggregate expenses, I really get that.

2 MR. ROSENBLATT: Right.

3 THE COURT: You know, that could be a disabling  
4 thing if every time you have to give them notice. We're not  
5 going to -- we're not going to have that.

6 But, you know, part of the point here is to build up  
7 trust by running the business in a way that won't raise red  
8 flags.

9 MR. ROSENBLATT: I understand. I mean --

10 THE COURT: So --

11 MR. ROSENBLATT: Again, just to reiterate. I mean,  
12 the issue really when we were discussing this and trying to  
13 come to some language that was acceptable to both sides was in  
14 view of where we are presently -- and with the hope that we  
15 will be able to build trust and everything else -- but in view  
16 of where we are presently, we didn't want to have provisions  
17 that were overly broad and were maybe somewhat ambiguous with  
18 regard to family members and who's this and that and so --

19 THE COURT: Let me ask you this. Do you think you  
20 will ever -- under the Nelkins' proposal for 2(g), will you  
21 ever have to give them notice?

22 MR. ROSENBLATT: I don't -- I don't think so. No.

23 THE COURT: Then we're going to use the Nelkins'  
24 proposal because it's not going to cost you.

25 MR. ROSENBLATT: Okay.

1           THE COURT: All right. Compensation under 2(h),  
2           what is -- Mr. Rosenblatt, what's the compensation that you  
3           would want to have go forward without notice here that you  
4           anticipate happening?

5           MR. ROSENBLATT: So at the direction of their then  
6           counsel, my clients took distributions, annual distributions  
7           in the amount of 208,000, which was obviously more than was  
8           set forth in the operating agreement. Because of the way it  
9           was structured, the counsel advised that it was okay to do  
10          that and not in violation of the operating agreement.

11          And so that's what my clients did. And so they're  
12          proposing simply that their three percent cost of living raise  
13          from their current salary be allowed. They're not going to  
14          pay themselves bonuses. In other words, they're just --

15          THE COURT: Oh, in other words -- so the number in  
16          the Nelkins' proposal is 104,000?

17          MR. ROSENBLATT: Correct.

18          THE COURT: And they doubled it this year?

19          MR. S. SCHREIBER: No. It was three years ago.

20          MR. ROSENBLATT: They doubled it three years ago at  
21          the direction of their counsel saying that it was okay to do  
22          it. In terms of distribution, that that would not be a  
23          violation of the operating agreement.

24          And so they did it and have been doing it for the  
25          past few years. Obviously, the Nelkin proposal would halve

1       their salary and cap their salary, which again they've been  
2       doing --

3               THE COURT:   When you say the prior counsel, you mean  
4       the Nelkin's?

5               MR. ROSENBLATT:   The Nelkins' version of what  
6       they've submitted.

7               THE COURT:   No.   No.   The Nelkins --

8               MR. ROSENBLATT:   Yes.   Yes.

9               THE COURT:   -- were the Nelkin's the prior counsel  
10       who said --

11              MR. ROSENBLATT:   Yes.

12              THE COURT:   -- take the 208,000?

13              MR. ROSENBLATT:   Yes.

14              THE COURT:   We need to have a hearing.   Go back to  
15       the table, resolve this, because I'm going to put all of you  
16       on the stand if you're saying that's not true.

17              Come join me on the witness stand, Ms. Nelkin.  
18       You're saying it's not true and you're saying it in a way that  
19       is meant to avoid being captured on the transcript.   Come join  
20       me, please.

21              MS. NELKIN:   Your Honor, I'll be happy to testify  
22       with regard to this.

23              THE COURT:   Raise your right hand.

24                              CAROL NELKIN, Sworn

25              THE COURT:   Have a seat.

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1 Mr. Rosenblatt, do you want to inquire?

2 MR. ROSENBLATT: Thank you, Your Honor. Can I just  
3 have one second to confer with my clients?

4 THE COURT: Mm-hmm.

5 (Pause.)

6 THE COURT: All right. Go ahead, Mr. Rosenblatt.

7 DIRECT EXAMINATION

8 BY MR. ROSENBLATT:

9 Q Ms. Nelkin, do you recall a proceeding before the Bais  
10 Din of America involving Mayer Koenig?

11 A Mr. Koenig at the very end served a hazmana if that's  
12 what you're referring to.

13 Q There was a proceeding before the Bais Din of America,  
14 correct?

15 A Are you talking about that involved all the Schreiber's  
16 and Mr. Koenig?

17 Q It involved all of the parties, right? Mr. Koenig served  
18 his hazmana and he asserted the position that any increase in  
19 salary to \$208,000 by the Schreiber's was improper and in  
20 violation of the operating agreement, do you remember that?

21 A Mr. Koenig served a hazmana before the Bais Din of  
22 America. There was never any hearing. There was never -- so  
23 I'm not sure what you're talking about with regard to the Bais  
24 Din of America.

25 Q Did Mr. Koenig ever take a position in connection with

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1       this case that the Schreiber's were not entitled to increase  
2       their compensation beyond \$104,000?

3       A     I don't recall ever having a conversation with Mr. Koenig  
4       or his lawyers with regard to that.

5       Q     So at no point -- your testimony is that at no point did  
6       you advise the Schreiber's that they could take distributions  
7       of \$208,000?

8       A     In this case, we were very careful not to advise the  
9       Schreiber's with regard to anything dealing with such matters.

10            Mr. Parness was their attorney for that because Mr.  
11       Friedman was raising issues about the nepotism. So Mr.  
12       Parness may have advised them with regard to this, but we were  
13       very careful not to give that kind of advice.

14       Q     So you would never -- you're saying that you never told  
15       the Schreiber's that they should have taken higher salaries or  
16       higher distributions earlier than they did three years ago?

17       A     I do not recall ever discussing that with the  
18       Schreiber's.

19       Q     You don't recall ever telling them that they could take  
20       distributions of \$208,000?

21       A     We would not give them advice like that. Mr. Parness was  
22       their counsel for matters dealing with Two Rivers.

23       Q     Even back three years ago Mr. Parness was their counsel?

24       A     I believe Mr. Parness has been their counsel certainly  
25       since we were involved in this lawsuit, or maybe shortly

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1       thereafter. I'm not exactly certain when.

2               MR. ROSENBLATT: I have no more questions for her,  
3       but I'd ask that Mr. Steven be allowed to testify.

4               THE COURT: We'll get to Mr. Schreiber. But you  
5       don't want to ask the question that is at the heart of the  
6       dispute?

7               MR. ROSENBLATT: Well, let me ask.

8               THE COURT: I will if you don't.

9       BY MR. ROSENBLATT:

10      Q     Is it your position that a distribution of \$208,000 would  
11      be in violation of the operating agreement?

12      A     I believe that the operating agreement does set a lower  
13      amount than that, yes.

14      Q     As a salary?

15      A     I don't have it in front of me. I believe that it sets  
16      out a number as to what their salary is and that their salary  
17      is \$104,000.

18      Q     And if the Schreiber's took that salary, not as a salary  
19      but as a distribution, that would be impermissible according  
20      to you?

21      A     I don't have that in front of me. I don't know honestly  
22      the distinction that you're making between salary and  
23      distribution.

24              Again, those were things that Mr. Parness or their  
25      corporate counsel or anyone else was advising them. We were



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1       advising them with regard to issues involved in this  
2       particular lawsuit. We were not involved in these kinds of  
3       day-to-day matters.

4       Q     So you never advised the Schreiber's about day-to-day  
5       matters in regard to Two Rivers?

6       A     As to the amount of their salary, I don't believe so.

7       Q     Not my question. You said you never advised them about  
8       day-to-day matters in Two Rivers. Is that your testimony?

9       A     If it involved the lawsuit or some issue that was  
10      involved in the lawsuit, it might have come up. But something  
11      like you're talking about absolutely that was Mr. Parness' or  
12      theirs. I mean, I'm not saying that they had to speak to Mr.  
13      Parness about that. And I really don't know.

14               But we were simply dealing with issues that were --  
15      that were relevant to the lawsuit. And we were pretty careful  
16      to do that because Mr. Friedman was raising those very issues  
17      that Judge Orenstein mentioned with regard to family members.

18      Q     And the issue of how much they were entitled to be paid  
19      as managing members of the Two Rivers was not part of the  
20      lawsuit, was never raised as part of the lawsuit?

21      A     I don't believe it came up that way.

22      Q     So you never gave advice to the Schreiber's about how  
23      much money they could take in distribution?

24      A     No.

25               THE COURT: Further?

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1 MR. ROSENBLATT: I have no more questions.

2 THE COURT: Ms. Hyland, you wish to inquire?

3 MS. HYLAND: No.

4 THE COURT: Okay. Before you go, just I have  
5 another question.

6 THE WITNESS: Yes.

7 THE COURT: During the course of the lawsuit, did  
8 you have any knowledge about what compensation, however  
9 characterized, the Schreiber's were receiving from Two Rivers?

10 THE WITNESS: I always thought it was \$104,000.  
11 That was my understanding. I don't know that we ever talked  
12 about it in length. I mean, as you well know Mr. Schreiber is  
13 my son-in-law.

14 And that's -- that's what the operating agreement  
15 says and that's what I understood. I don't think I really  
16 inquired of him beyond that.

17 THE COURT: Okay. You're excused.

18 (Witness excused.)

19 THE COURT: Steve Schreiber.

20 Of course, counsel, if you think Eugene Schreiber or  
21 Jay Nelkin should testify in this, I'll be happy to bring them  
22 up at your request.

23 STEVEN SCHREIBER, Sworn

24 THE COURT: Have a seat, please.

25 Mr. Rosenblatt.

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1 MR. ROSENBLATT: Thank you.

2 DIRECT EXAMINATION

3 BY MR. ROSENBLATT:

4 Q Mr. Schreiber, you've heard what transpired here with  
5 regard to the distributions from Two Rivers. How did you come  
6 about -- let me ask you this.

7 Do you currently take \$208,000 as a distribution from Two  
8 Rivers as an annual distribution?

9 A It's \$4,000 a year.

10 Q 4,0000 --

11 A 4,000 a week.

12 Q Four thousand dollars a week?

13 A Yes.

14 Q Okay. Why do you do that?

15 A It's been my opinion, and my counsel told me I can -- I  
16 will say without offending anyone my mother-in-law was in my  
17 house every week, stayed in my house, but she told me, you  
18 know, now that Friedman is out, you guys can run your  
19 business. You're an MBA. Your father's an engineer. You can  
20 finally live with a liveable salary. You should take money  
21 out. It's about time. I said, honestly the company's not  
22 doing well. We have legal fees. I don't want to.

23 And then the conversation came up again, oh, you  
24 should do it. I said, you know, at a point, I said, you know,  
25 I should. I don't want to rock the boat with Friedman. He's

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1 a wealthy person. I don't want to do it.

2 But it came a point where I decided, you know. I  
3 asked my counsel again, my mother-in-law, and she says, yeah,  
4 what's the big deal. Just you both will make a resolution and  
5 you can raise your salaries. So we started I think in the  
6 beginning of 2016.

7 Q Was there such a resolution?

8 A I believe so, yes.

9 Q And was it discussed with Mr. Koenig as well what was  
10 going to be done?

11 A Yes. Mr. Koenig. You can see the books and records of  
12 the company. He's taken \$4,000 a week up to last week or so,  
13 two weeks ago.

14 Q And again this was done with the discussion with your  
15 counsel?

16 A One hundred percent. A lot of Mr. Parness, I will say  
17 the truth, was a figurehead in this case and the Nelkin's were  
18 advising him of how things should be done. He would always  
19 get their approval before, because as you know, they were  
20 aligned.

21 So it might, you know, they spoke to each other. I  
22 cleared it with them. I cleared it with Hill. I said, you  
23 know -- he said, I don't want to do anything to mess up the  
24 Nelkins' case. If they say it's fine, then you guys can do  
25 it, so.

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1 Q Was this conversation or was this advice to take this  
2 \$4,000 a week, was that ever put in writing by the Nelkin's?

3 A I've learned that what -- with my experience -- that  
4 attorneys write things that they want to be seen in court and  
5 things they don't, they say to me. So now I see that's -- why  
6 that wasn't the case.

7 But we also have a CFO in the company, Mr. Papa, who  
8 would -- he's like our gatekeeper in the company. I can't  
9 write a check myself. I don't know how. And he wouldn't  
10 approve it and he cleared it and he wouldn't do it otherwise.

11 It's just that's not how we run our company. We are  
12 -- our books, now after we got Mr. Friedman out, are so clean  
13 that if I wanted to give you a check for a dollar I don't know  
14 how. I can't.

15 Q So when Ms. Nelkin talked about how she never asked you  
16 what salary distributions you were making, did she ever ask  
17 you?

18 A She put in the complaint that I was underpaid and Mr.  
19 Friedman is constraining me by giving me small salaries. And  
20 that's part of the relief she said when she -- this fee  
21 dispute came up. You guys were able to increase your  
22 salaries, so now, you know, as far as the benefits and others  
23 and all that and, therefore, we're entitled to compensation  
24 because you raised your salary for the past three years.

25 Q So --

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1 A So for her to say this now is very --

2 Q So they were aware?

3 A One hundred and ten percent.

4 MR. ROSENBLATT: I have nothing further.

5 THE COURT: Counsel?

6 MS. HYLAND: Just a minute. Could I have a minute?

7 (Pause.)

8 THE COURT: If you could, just be sure to be near a  
9 microphone.

10 MS. HYLAND: Oh, I'll stand here.

11 THE COURT: Okay.

12 CROSS-EXAMINATION

13 BY MS. HYLAND:

14 Q Good morning, Mr. Schreiber. You testified that you had  
15 a conversation with Mrs. Nelkin about -- where she said to you  
16 you should pay yourself more money?

17 A Mm-hmm.

18 Q When did that conversation take place?

19 A It was probably a few months after the Friedman  
20 injunction or the TRO, whatever, when one of those things were  
21 put into place. And I said now is not the time. I don't feel  
22 comfortable.

23 Q Okay. And what specifically did she say to you?

24 A Ms. Hyland, you have to understand, I traveled all around  
25 the world with her. She was in my house every day. This is

1 not like I'm calling Mr. Rosenblatt and he bills me by the  
2 hour. This was my life. She lived in my house. She  
3 discussed with my wife.

4 She even told my wife about the -- you can bring my  
5 wife here to testify about this because she heard it on the  
6 Saturday dinner table.

7 Q Okay. And what specifically did she say?

8 A She said I don't know why you guys are not taking a  
9 higher salary. What are you guys waiting for? I said because  
10 I own the business. And if I can do without a higher salary,  
11 I'd rather invest it in the business, because we're  
12 constrained with Mr. Friedman, and we can't get financing and  
13 we have to pay bills. I'd rather pay for coffee than put  
14 money in my bank account.

15 But it came a point where I said I need to. And her  
16 response was I don't know what you were waiting for until now.  
17 And then I gave her the response was because the best interest  
18 of the company came first. But now I feel it's necessary. I  
19 feel I'm fighting for the company. And the company was able  
20 to pay me and I took it.

21 Q Can you -- I just ask you limit your response to the  
22 questions. I may ask a follow-up question. So my --

23 A I'm sorry. This is the first time I've done this.

24 Q That's all right. At the time that she --

25 THE COURT: Excuse me, Ms. Hyland. I'm going to

1 require this of all counsel. Please don't in the future  
2 interrupt a witness's answer.

3 MS. HYLAND: I apologize.

4 THE COURT: Wait for it to be completed. And then  
5 if you think an application to me is appropriate, make it, but  
6 do not instruct a witness how the witness should or should not  
7 answer, please.

8 MS. HYLAND: I apologize.

9 BY MS. HYLAND:

10 Q At the time that you state that this conversation took  
11 place, what was your salary?

12 A It was many conversations. It was probably 20-25  
13 conversations about the salary issue alone. My salary was  
14 \$2,000 a week.

15 Q So at the time -- at the time that a decision was made on  
16 the preliminary or the TRO, your salary was \$2,000 a week?

17 A Yes.

18 Q And were you taking distributions as well?

19 A No.

20 Q Did you have any other compensation other than the  
21 \$2,000?

22 A You have to understand this company is an LLC. If you --  
23 the structure of the company is the profits flow down to the  
24 partners. So, for example, if we made a million dollars  
25 profit, and I owned 11 and a half percent, I am liable for the



1 taxes of \$110,000.

2 So it was the company policy, as in the operating  
3 agreement, to reimburse the members for their tax liabilities  
4 of that year, which as you should know, I withheld it. I  
5 think for two or three years I did not even take those  
6 distributions because the company was not financially viable  
7 for me to do it, so I deferred that.

8 Q Other than that, were you taking any other compensation  
9 at the time --

10 A No.

11 Q -- that the TRO was issued?

12 A No.

13 Q So just the 2,000 a week and then this tax?

14 A Not even that tax.

15 Q Not even the tax, okay.

16 A It was allowed in the operating agreement, but I deferred  
17 it because I used my wife's salary to help me get through  
18 because the company needed the money more than I did.

19 Q And at what point did you decide to -- after you -- when  
20 did you raise your salary or your compensation to \$4,000 a  
21 week?

22 A I think it was the January of 2016, I believe. No, 2017.

23 Q And --

24 A Because this case was filed in December of 2015, right?  
25 So it was a year and a month after.

1 Q And how many conversations did you have with Ms. Nelkin  
2 leading up to your decision to raise your compensation?

3 A Like said, Ms. Hyland, she has a bedroom in my house.  
4 How many conversations? She sat at my table for -- thousands,  
5 that's the answer. If you want a clear answer, thousands.

6 Q And who else -- thousands of conversations --

7 A Yes.

8 Q -- between December of 2015 and January of 2016?

9 A About everything, yes. Not about compensation, but this  
10 case. Actually what was -- repeat the question.

11 THE COURT: Look, you're both engaging -- you're  
12 engaging in some hyperbole -- you're following up on it. It's  
13 not particularly germane. Move on.

14 MS. HYLAND: Okay.

15 BY MS. HYLAND:

16 Q Who else was involved in these conversations regarding  
17 this compensation and salary?

18 A My wife, Mr. Papa, Mr. Parness, my father, Eugene, Mr.  
19 Koenig. You could see the books and records of the company.  
20 My wife.

21 Q And did you discuss this issue of your compensation or  
22 your salary with Mr. Parness as well?

23 A Only when he -- he only said I'm -- he said I have a  
24 limited role as the nominal defendant in this case, and I  
25 don't want to rock the boat, so you'll have to get clearance

1 from the Nelkin's.

2 Q And did you -- did you discuss with -- other than as you  
3 say Ms. Nelkin's asking you why don't you raise your salary,  
4 did you specifically talk about whether and to what extent  
5 you'd be permitted to raise your salary or compensation under  
6 the operating agreement with Ms. Nelkin?

7 A One hundred percent. She said I can -- since Mr.  
8 Friedman is out of the company, we don't need his vote anymore  
9 and we can just do it. She said I don't know why you waited  
10 so long. To the word, when I took the salary, I said, you  
11 know, we increased the salary this week. Her response to me  
12 was I don't know you guys waited so long to do that. He's  
13 been out for a year already.

14 Q I'm confused. I apologize. I'm confused about the time  
15 frame.

16 A Like I said, January, 2017 is the first time I --

17 Q 2017?

18 A Yes.

19 Q Oh, I thought you said --

20 A A year and a month from when we filed it, which we filed  
21 December of 2015, so 13 months after.

22 Q Okay. I thought you had said January, 2016.

23 A No.

24 Q And any of these communications -- again, any of these  
25 communications, anything in writing confirming --

1 MS. HYLAND: May I have an instruction to allow me  
2 to finish my sentence -- my question?

3 THE COURT: Let her finish. I didn't hear an  
4 interruption, but --

5 THE WITNESS: I didn't say anything.

6 THE COURT: Okay. Go ahead.

7 BY MS. HYLAND:

8 Q Is there an email, any communication whatsoever in  
9 writing regarding -- with either of the Nelkin's regarding  
10 compensation or salary or distributions?

11 A No offense to attorneys, but I think they know how to  
12 cover --

13 THE COURT: Mr. Schreiber, answer the question.  
14 Don't make a speech.

15 THE WITNESS: Yes, sir. Yes, sir. No question?

16 THE COURT: There was, yeah.

17 THE WITNESS: If there's an email?

18 BY MS. HYLAND:

19 Q Can you --

20 THE COURT: Is there any --

21 MS. HYLAND: I'm sorry. I'm sorry.

22 THE COURT: Is there anything in writing that  
23 reflects this advice that you testified to?

24 THE WITNESS: There might be. They even helped me  
25 draft the resolution for Mr. Parness.

1 BY MS. HYLAND:

2 Q Who helped you draft the resolution?

3 A I called my mother-in-law and I said Mr. Parness is  
4 drafting some resolution between the members for a salary  
5 increase and I had the conversation with her. I don't -- she  
6 didn't put her name on it, but she was involved.

7 Q So Mr. Parness was the one who drafted the resolution?

8 A With the help of the Nelkins.

9 MS. HYLAND: No more questions.

10 THE COURT: Okay. Well, I have a couple again.  
11 People can follow up as they thing appropriate.

12 Were there emails back and forth about -- containing  
13 the draft language for a resolution allowing you to take a  
14 greater distribution?

15 THE WITNESS: I don't think so. Most of it was on  
16 the phone because --

17 THE COURT: Okay. Because you mentioned that Ms.  
18 Nelkin helped to draft the language.

19 THE WITNESS: Yes. She'd say tell Hill to write it  
20 this way, things like that.

21 THE COURT: I see. Okay.

22 THE WITNESS: So it's -- Your Honor, it was a more  
23 casual relationship then so it wasn't as formalized as I  
24 discuss with Mr. Rosenblatt.

25 THE COURT: No. I get that. I get that. I'm just

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1       trying to find out if there's going to be anything in writing  
2       before the actual resolution --

3               THE WITNESS: No.

4               THE COURT: -- either a draft of the resolution or  
5       something else that was sent back and forth by email?

6               THE WITNESS: No.

7               THE COURT: Okay.

8               THE WITNESS: It was a simple resolution.

9               THE COURT: All right. Thank you.

10              Anything further? Redirect?

11              MR. ROSENBLATT: Not from me. No.

12              THE COURT: All right. You're excused.

13              (Witness excused.)

14              THE COURT: Does anybody see any benefit to be  
15       gained by calling either Eugene Schreiber or Jay Nelkin to  
16       further elaborate on this? I'm happy to do it if anyone  
17       wants, but I think I -- okay.

18              MR. ROSENBLATT: I mean, Eugene Schreiber was a  
19       party to these conversations. I don't know if Your Honor  
20       needs --

21              THE COURT: I anticipate.

22              MR. ROSENBLATT: I don't think we need the  
23       accumulative testimony, but I'm just prepared to --

24              THE COURT: Right. I anticipate that the testimony  
25       from Eugene Schreiber and Jay Nelkin would be essentially

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1 cumulative of what I've heard, but if I'm mistaken about that,  
2 I'm happy to hear it. If anyone wants to call them, please  
3 do.

4 MS. HYLAND: Just one minute.

5 (Pause.)

6 MS. HYLAND: Nothing further.

7 THE COURT: Okay. So I don't -- I'm not in a  
8 position I don't think to make a credibility determination as  
9 between the two witnesses who are telling me irreconcilable  
10 stories about this.

11 If I were to need to make a factual determination,  
12 which I think I would have to do to resolve this, I would want  
13 to hear from other witnesses including Mr. Parness and Mr.  
14 Papa because according to Mr. Schreiber's version of events  
15 would both be percipient witnesses to the advice that was  
16 allegedly provided.

17 This is a terribly distasteful dispute even more so  
18 than the rest of those before me.

19 I'm going -- you're going to be negotiating new  
20 language on paragraph 2(d). I'm going to ask you to take a  
21 final crack at 2(h) as well. If you can't resolve it, I will  
22 reconvene and we'll have Mr. Papa and Mr. Parness here to  
23 provide their accounts.

24 Let's move on to 2(i). Mr. Rosenblatt, what is it  
25 you're concerned about being required to provide notice about

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1 that you anticipate will actually come up?

2 MR. ROSENBLATT: Just have one second if I could?

3 THE COURT: Yeah. This is about additional

4 compensation to the Schreibers.

5 (Pause.)

6 MR. ROSENBLATT: Assuming 2(h) is in line with the  
7 \$208,000 salary, there isn't a problem in terms of additional  
8 compensation.

9 THE COURT: But really, whatever the resolution of  
10 2(h) is, 2(i) would be -- the disputed part of 2(i) would be  
11 superfluous, right?

12 MR. ROSENBLATT: I think it would drive the bus,  
13 yes, on 2(i).

14 THE COURT: Okay. So I'm going to take the  
15 Schreibers' version of 2(i) recognizing that --

16 MS. HYLAND: Schreiber's or Nelkin's? I'm sorry.

17 THE COURT: I'm sorry. Forgive me. The Nelkin's  
18 version of 2(i) recognizing that really what you're fighting  
19 about is in 2(h).

20 All right. And 2(l). Ms. Hyland, the language  
21 that's in dispute is an additional provision requiring  
22 notification for any action that can reasonably be expected to  
23 deprive Nelkin & Nelkin of any benefits of its charging lien.  
24 What is it that you think would be covered by that that  
25 wouldn't be covered by the rest of the agreement?



1 MS. HYLAND: It's a -- it is a catchall because  
2 there are things we may not be able to anticipate that could  
3 substantially reduce the value.

4 And so it's -- we just -- the whole purpose of this  
5 is to effectuate a charging lien. And since we're doing this  
6 instead of having a charging lien, we want to make sure that  
7 it accomplishes that goal.

8 THE COURT: I get that. But I'm hard pressed to see  
9 how this can provide any effective protection. You are doing  
10 an admiral job of identifying the things that might affect  
11 your clients' interest and putting them into the agreement.

12 If it escapes your imagination -- no, I mean this  
13 quite sincerely -- if it escapes your imagination, even with  
14 the best of intentions on the other side, it might not occur  
15 to them that the action under consideration would be such that  
16 it would reasonably be expected to deprive your clients of the  
17 benefits of their lien.

18 So I don't know how this is one that can be policed.  
19 Because if you find out about an action for which you weren't  
20 provided notice, you'd say wait, there were supposed to do it  
21 under this catchall. And they'd say we didn't think it would  
22 have that affect.

23 So I'm not going to adopt it. Not because I don't  
24 get the concern, but I think if you want this notice  
25 protection, you have to identify specifically what you want.

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1 And so I'm open to you coming back and saying, oh,  
2 we've learned about this going forward, this should be part of  
3 the notice provision.

4 MS. HYLAND: Okay. That works.

5 THE COURT: 2(1), doing the Nelkins' version.

6 MS. HYLAND: I think you meant --

7 THE COURT: Yeah. I've got this backwards. 2(i) is  
8 going to be the Nelkins' and 2(1) is the Schreibers'.

9 Okay. You have in paragraph 3 a dispute about  
10 timing. I think as a practical matter, two calendar days may  
11 not work out, five business days is probably longer than  
12 needed, let's make it two business days.

13 And then paragraph 4, I think this is our last one,  
14 again I'm going to go with two business days. I'm going to  
15 suggest two things about paragraph 4 and ask you to take a  
16 crack at it since I'm giving you some homework on some of  
17 these other paragraphs.

18 First, paragraph 4 doesn't really specify what marks  
19 an objection that you've been unable to resolve, so that may  
20 lead to some fights about whether an objection is, you know,  
21 coming to court with an objection is timely.

22 MS. HYLAND: Mm-hmm.

23 THE COURT: I don't off the top of my head have a  
24 suggestion on that. You know, maybe something like, you know,  
25 a final email or letter that says, you know, unless you do X,

1 we will consider this unresolved. But put a deadline of no  
2 less than 24 hours on that. You know, something like that.  
3 But just that we avoid any fights about whether coming to  
4 court is done in a timely fashion under Paragraph 4.

5 MS. HYLAND: Okay.

6 THE COURT: The other thing I'm going to suggest is  
7 I've identified two provisions that are subject to fee  
8 switching, if the objection to the action is unsuccessful, to  
9 2(d) and 2(h). I'm not inviting suggestions for others.

10 But I do think that writing that into the agreement  
11 will best be accomplished in paragraph 4 since that concerns  
12 you coming to court.

13 MR. ROSENBLATT: I just -- while we're on the topic  
14 of that issue, I know typically if there's going to be some  
15 sort of motion practice or anything like that there's a  
16 request for a pre-motion conference.

17 THE COURT: Yes.

18 MR. ROSENBLATT: Would we be able to do this on  
19 letter to the Court?

20 THE COURT: I would prefer it to be done on letter.  
21 And I don't want to presume too much -- let me know when  
22 you're ready if you need to --

23 MS. HYLAND: I apologize.

24 THE COURT: No, that's fine.

25 I don't want to presume too much. I think it will

1 be most efficient to write into the agreement that those  
2 objections will be made to me and I'll resolve them, but I  
3 can't direct you to do that.

4 I'm just thinking it's an efficient way rather than  
5 bring it to me in the first instance because I'm more familiar  
6 with it and then have it -- have the objections to Judge Amon.

7 You could do that, of course. But I think what  
8 you're looking for and the reason you've come to me to resolve  
9 these issues is really because just this is the quickest way  
10 to get it done and you need a decision more than you need a  
11 particular decision. So that's a suggestion. Consider it.  
12 you know, use it or not.

13 All right, folks. Look, you should be -- I'm not  
14 going to suggest anything in this case is simple, but you  
15 should either reach an agreement or not quickly. You know  
16 this issue well.

17 Can I have the proposed -- the redraft of 2(d) and  
18 2(h) and paragraph 4, can I have that done within a week?

19 MS. HYLAND: When would we get the invoices, because  
20 we would need those to redo the redraft?

21 THE COURT: Oh, yeah.

22 THE COURT: Monday.

23 MR. ROSENBLATT: We can have it by Monday?

24 MS. HYLAND: And so we would then have a redraft  
25 due?

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1 THE COURT: By Friday?

2 MS. HYLAND: Friday? Okay.

3 THE COURT: Will that work? Because, I mean, you  
4 can get a lot done without --

5 MR. ROSENBLATT: That's fine.

6 THE COURT: Okay.

7 MR. ROSENBLATT: I think that's fine.

8 THE COURT: Okay. So invoices Monday, draft on  
9 Friday.

10 Okay, folks. Thank you all. Is there anything else  
11 that we should be taking up today? Have I missed something?

12 MS. HYLAND: I don't see any.

13 MR. ROSENBLATT: No, I don't think so. Just to  
14 revisit the first stipulation issue, Your Honor will revisit  
15 all that after -- now that we're done, right?

16 THE COURT: Which one?

17 MR. ROSENBLATT: The issue about depositing the  
18 funds in court and all that kind of stuff. I know that was  
19 not addressed today, but --

20 THE COURT: Remind me what the dispute is.

21 MR. ROSENBLATT: So I think the issue was there were  
22 two separate stipulations. Ms. Hyland raised it at the  
23 beginning. There was the stipulation that --

24 THE COURT: Yeah. I know. I thought it was just  
25 something I hadn't signed, but --

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1 MR. ROSENBLATT: Yeah. Yeah. Yeah.

2 MS. HYLAND: Yes.

3 MR. ROSENBLATT: There was --

4 THE COURT: Is there something in dispute that I  
5 need to resolve?

6 MR. ROSENBLATT: No. No, there isn't.

7 THE COURT: Oh, yeah. Yeah. Once --

8 MR. ROSENBLATT: I was just -- there was just some  
9 facts --

10 THE COURT: Once I sign off on that, I'm going to  
11 sign off on that. But unless -- am I missing that there is an  
12 interest in having that done sooner?

13 MS. HYLAND: Yes.

14 THE COURT: There is? Okay.

15 MR. ROSENBLATT: Yeah. I think -- I think just to  
16 give up comfort to all of the parties --

17 THE COURT: Sure. Sure. Sure.

18 MR. ROSENBLATT: -- (indiscernible) defendants and  
19 that kind of thing.

20 THE COURT: No problem. Does anyone know off the  
21 top of their head which docket entry it is so I can find it  
22 and make sure I get --

23 MS. HYLAND: I have 603-1.

24 MR. ROSENBLATT: Yeah.

25 MR. MAULSBY: Yes.

1 THE COURT: 603-1. Okay. I'll take care of that.

2 MR. ROSENBLATT: Thank you. We appreciate Your  
3 Honor's time.

4 THE COURT: Thank you all. Have a very good day.

5 MS. HYLAND: Thank you, Your Honor.

6 MR. MAULSBY: Thank you.

7 (Proceedings concluded at 11:16 a.m.)

8 I, CHRISTINE FIORE, court-approved transcriber and  
9 certified electronic reporter and transcriber, certify that  
10 the foregoing is a correct transcript from the official  
11 electronic sound recording of the proceedings in the above-  
12 entitled matter.

13  
14 

15 December 3, 2018

16 \_\_\_\_\_  
Christine Fiore, CERT